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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/942,673	08/31/2001	Eric Bouffard	P 283115	7804

909 7590 06/05/2003

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EXAMINER	
FISCHMANN, BRYAN R	

ART UNIT	PAPER NUMBER
3618	

DATE MAILED: 06/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)
09/942,673	BOUFFARD, ET AL
Examiner	**Art Unit**
Bryan Fischmann	3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *Feb 24, 2003*.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-7, 9-18, and 20-31* is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-7, 9-18, and 20-31* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☒ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on *Feb 24, 2001* is/are a) ☐ accepted or b) ☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☒ The proposed drawing correction filed on *Feb 24, 2003* is: a) ☒ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
4) ☐ Interview Summary (PTO-413) Paper No(s). _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

Acknowledgments

1. The amendment (paper 4) and drawing corrections (paper 3) filed 2-24-2003 have been entered.

Specification

2. The disclosure is objected to because of the following:

A) Paragraph 0050 recites "As shown in Figures 6 and 7...the bottom portion 330...". The Examiner cannot locate reference number 330 on either Figure 6 or 7.

Drawings

3. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

The drawings are considered informal as some of the reference numerals in Figures 12 and 13 are not uniform and well defined.

Claim Objections

4. Claims 1, 3, 7, 10, 11, 16, 18 30-23 and 27 are objected to because of the following:

A) Claims 1, 3, 7, 10, 11, 18, 20-23 are objected to due to the following:

Claims 1, 3, 7, 10, 11 and 18 and 20-23 recite "a pair of rear fenders". However, note that Figure 13 shows that there is only a single rear fender 516, not a plurality of "fenders".

Note that Webster's Collegiate Dictionary defines "pair" as: "two similar or associated things". This recitation implies two separate "things", or "parts", as opposed to one "continuous" thing, object, or part arbitrarily divided into two things, objects, or parts, as Applicant has done in dividing one single continuous fender 516 into two separate fenders.

Although objected to, for purposes of examination, the Examiner will utilize the Applicant's interpretation of "rear fenders" being designated as "right and left portions" of a single continuous structure at the rear of the vehicle, where the right and left portions, or "fenders", are simply the portion on each side of a longitudinal centerline of the one continuous rear fender, since the prior art teaches a similar construction, in many cases.

B) Claim 16 is objected to due to the following:

Claim 16 recites "...wherein an end of the air intake pipe extends within the seat".

Since the "end" has no length, it would seem that the end cannot "extend". Therefore, it would seem that the above recitation is more accurately worded "wherein an end of the air intake pipe is located within the seat".

C) Claim 27 recites "wherein the intake pipe includes a clip that attaches to the fender structure".

As best understood the "intake pipe" is reference number 302, the "clip" is reference number 315 and "fender structure" is reference number 516. Note that Instant Figure 8 shows the clip 15 is attached to reference number 502. Reference number 502 is defined as "connecting wall", not as part of the "fender". Therefore, reference number 502 is not considered to be fender

structure. Note also that a "fender" is defined by Webster's Collegiate Dictionary, 10th Edition, as "a guard over the wheel". Reference number 502 does not appear to be a "guard" and is not located "over" a wheel. Therefore, referring to reference number 502 as "fender structure" is objected to.

For purposes of examination, any structure connecting the rear fenders will be considered "fender structure".

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicants regard as their invention.

A) Claim 15 recites "...the at least one opening is at least partially formed by the rear portion of the seat". For this to be possible, it would seem that the opening would have to be "between" the seat and the fender, as taught by the Instant Application in Figure 13B.

Claim 15 is dependant upon claim 7.

Claim 7 recites "...the at least one opening being located on at least one of the rear fenders". This would imply that the opening is within the "perimeter" of the fender surface.

From this, claims 7 and 15 would seem mutually exclusive.

It is therefore unclear how claims 7 and 15 could be mutually satisfied relative to the "opening".

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 7, 9, 10, 13, 14, 16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Patent 61-171610.

Japanese Patent 61-171610 teaches a straddle-type vehicle comprising:

an engine (14);

a seat (6) having a front portion positioned generally above the engine (Figure 2);

an air intake system (32-35) operatively connected to the engine (Figure 3);

at least one opening (34) adjacent a rear portion of the seat (Figure 2) and suppling intake air to the air intake system; and

a pair of rear fenders (8) provided adjacent the rear portion of the seat, the at least one opening being located on at least one of the rear fenders (Figure 2).

Regarding claim 14, note that the "sideways" orientation of the air intake 34 will avoid interaction with a water wave, since the water wave is traveling "fore-to-aft". Also note that the water wave whose height is unspecified, could be only, say, 1" high.

Regarding claims 16 and 17, the "seat" is considered to include not just the "cushion member 6, but also the supporting structure. Note that this is consistent with Figure 13 of the Instant Application, where for the "end" of the air intake pipe to be "within" the seat, as recited in claim 16, the seat must be defined to include the supporting structure of the seat, and not just the "cushion member" that a user sits on. Note that using this definition of "seat", that Figures 2 and 3 of Japanese Patent 61-171610 shows an "end" of an intake pipe is "within" the seat.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. Claims 1 and 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent 61-200029.

Japanese Patent 61-200029 teaches a vehicle having a frame (Figures 2-4) and front and rear wheels suspended from the frame (Figures 1-4) comprising:

a pair of rear fenders (10, 20 and 84 - see comments below) attached to the frame, the rear fenders having at least one ventilation opening (88);

an engine (58) mounted on the frame (Figures 2 and 3) and between the rear fenders (Figures 2 and 3), the engine providing motive power to at lest one of the front and rear wheels (Figure 3); and

an air intake box (80) connected (via vehicle structure) to the frame and supplying intake air to the engine, the air intake box including an intake pipe (82) connected to and receiving intake air from the at least one ventilation opening (88).

Japanese Patent 61-200029 fails to explicitly state that the vehicle is an "all terrain vehicle".

However, an "all terrain vehicle" is understood to be used "off-road" as well as "on-road". Note that the English Language abstract for Japanese Patent 61-200029 recites "To make it hard for an air cleaner to suck in...up flung dust due to wheels...". This recitation is a clear indication that the vehicle is intended to be used "off-road", as if the vehicle was used only on paved roads, there would be no "up flung dust". Also note that the rugged construction of the frame and suspension system facilitates off-road use of the vehicle.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the vehicle of Japanese Patent 61-200029 may be considered an "all terrain vehicle".

Also note regarding the recitation of "An all terrain vehicle" in the preamble of claim 1, Section 2111.02 of the MPEP recites "Any terminology in the preamble that limits the structure of the claim limitation must be treated as a claim limitation....If the body of a claim fully and intrinsically sets forth all of the limitations of the claimed invention, and the preamble merely states...the purpose or intended use of the invention...then the preamble is not considered a limitation...". Since the above preamble recitation only recites intended use and does not contain any structural limitations, any device that meets the limitations of the body of claim 1 will be understood to also meet the preamble limitations since any device that meets the limitations of the body of claim 1 will be able to functionally perform the intended use recited in the preamble.

Regarding the recitation of "rear fenders" (plural) in claim 1, note that the "all terrain vehicle" may be broadly considered to have a fender on each side of the centerline of the vehicle. Also note that Applicant shows only a single rear fender on Figure 13. See also the claim objection portion of this Office Action.

Regarding the claim 3 recitation of a seat located "between" the rear fenders, note that Webster's Collegiate Dictionary, 10th Edition, defines "between" as: "an intermediate space". Note that the seat of Japanese Patent 61-200029 may broadly be considered to be "between" the rear fenders, even though the seat is "forward" of the rear fenders, just as Texas may be considered to be "between" Washington DC and Seattle, even though Texas is not located in a straight line between these two cities. Regarding the claim 3 recitation "the intake pipe including an inlet end positioned adjacent a rear lateral portion of the seat". Note that Figure 4 of Japanese

Patent 61-200029 shows the seat back 32a is "adjacent" the intake pipe 82, particularly when it is noted that Webster's Collegiate Dictionary, 10th Edition, defines "adjacent" as: "not distant". Also see the claim objection portion of this Office Action regarding the term "rear fenders".

Regarding claim 4, see Figure 4.

Regarding claim 5 and 6, see Figure 2, noting the connection of reference number 82, which is configured as a hose to reference number 86 which is configured as a short length of pipe commonly known as a "nipple" and 84. Although not taught by Japanese Patent 61-200029, the Examiner takes Official Notice that hoses, especially where relatively low pressures are involved, are commonly attached to pipes or nipples by clamps or clips. An example of a clamp is a "hose clamp" used on many cars. An example of a clip is a "c-clip" also used in cars, on vacuum cleaner hoses etc. A hose clamp is advantageous in that is offers 360 degree clamping of the hose, minimizing the hose coming loose. A "c-clip" is advantageous in that the clip may be installed, or removed without the "joint" being broken. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a fastener such as a hose clamp or c-clip where reference numbers 82 and 86 of Figure 4 of Japanese Patent 61-200029 are connected.

Note that the above Official Notice is repeated from the last Office Action (paper 2). Since Applicant did not seasonally traverse the above Official Notice, the above Official Notice is now considered to be admitted prior art. See Section 2144.03 of the MPEP.

11. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent 60-153418 in view of Japanese Patent 5-147565.

Japanese Patent 60-153418 teaches a vehicle having front and rear wheels (4 and 5) comprising:

a pair of rear fenders (Figure 1 - see comments below);

an engine (English Language Abstract); and

an air intake box (13) supplying intake air to the engine, the air intake box including an intake pipe (14a) connected to and receiving intake air.

Japanese Patent 60-153418 fails to explicitly state that the vehicle is an "all terrain vehicle". Japanese Patent 60-153418 also fails to teach that the front and rear wheels, the rear fenders and an engine are suspended, attached and mounted, respectively to a frame, at least one ventilation opening on the rear fenders and that the engine is mounted between the rear fenders.

However, an "all terrain vehicle" is understood to be used "off-road" as well as "on-road". Note that the vehicle of Japanese Patent 60-153418 is described in the title as a "motortricycle". Two or three wheeled motorcycles are generally understood to be capable of being ridden "off-road", in such terrain such as grass, dirt trails, etc., as well as "on-road". Due to this, the "motortricycle" of Japanese Patent 60-153418 may be considered to be an "all-terrain vehicle". All terrain vehicles are advantageous in that they offer the user the possibility of many "expanded" destinations, not accessible by a conventional automobile. Also note that the term

"all terrain vehicle" is considered to be a "misnomer", as no vehicle, including Applicant's, is capable of being driven on "all terrain" of the earth, including sides of cliffs and the ocean floor.

Also, Japanese Patent 5-147565 teaches a frame (4). A frame is necessary to provide a strong and stable structure on which vehicle components such as an the engine and wheels are either directly mounted, or connected to.

Additionally, Japanese Patent 5-147565 teaches an opening (42 and 43) on a rear portion of a rear fender (32). An opening at a rear portion of a rear fender is advantageous where the radiator and fan is installed within a rear fender, such as Japanese Patent 60-153418, so as to allow a smoother and greater flow of air to the radiator via reference numeral 9 of Japanese Patent 60-153418 than would be possible if there were not openings present and air had to be drawn from the open area around the bottom of the vehicle near the wheels which would require the airflow to take a sharp turn just upstream of the radiator.

Further, Japanese Patent 60-153418, in combination with the English Language Abstract leaves unclear where the engine is located. However, due to the vehicle configuration and location of the air intake system, the only location that would allow sufficient room, and is proximal to the air intake system and drive wheels is the area under the seat and between the fenders. Note that the purpose of the engine is to provide motive power to the drive wheels. Note also that this is the location of the engine taught by Japanese Patent 5-147565. Also note that the English Language Abstract of Japanese Patent 60-153418 teaches that the air intake pipe 14a is associated with a carburetor. The Examiner takes Official Notice that a carburetor is

associated with an engine. This may be seen on various small vehicles such as lawn mowers and pre "mid-80's vintage" automobiles. A carburetor is necessary to provide the correct air/fuel ratio to an engine and to regulate engine output by controlling the density of the incoming air/fuel mixture to the engine.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the vehicle of Japanese Patent 60-15348 may be considered an "all terrain vehicle". It also would have been obvious to one of ordinary skill in the art at the time the invention was made that the vehicle of Japanese Patent 60-15348 would have a frame, as taught by Japanese Patent 5-147565. It additionally would have been obvious to one of ordinary skill in the art at the time the invention was made to include ventilation openings on the rear fenders of Japanese Patent 60-15348, as taught by Japanese Patent 5-147565. It further would have been obvious to one of ordinary skill in the art at the time the invention was made that the engine of Japanese Patent 60-15348 would be located between the rear fenders.

Note that when the teachings of Japanese Patent 5-147565, which arguably has only a single rear fender, since it has only a single rear wheel, is applied to Japanese Patent 60-153418, which has two rear fenders, since it has two rear wheels, (see claim objection portion of this Office Action) that the openings 42 and 43 of Japanese Patent 5-147565 are on both rear fenders of Japanese Patent 60-153418.

Also note regarding the recitation of "An all terrain vehicle" in the preamble of claim 1, Section 2111.02 of the MPEP recites "Any terminology in the preamble that limits the structure of the claim limitation must be treated as a claim limitation....If the body of a claim fully and intrinsically sets forth all of the limitations of the claimed invention, and the preamble merely states...the purpose or intended use of the invention...then the preamble is not considered a limitation...". Since the above preamble recitation only recites intended use and does not contain any structural limitations, any device that meets the limitations of the body of claim 1 will be understood to also meet the preamble limitations since any device that meets the limitations of the body of claim 1 will be able to functionally perform the intended use recited in the preamble.

Regarding the recitation of "rear fenders" (plural) in claim 1, note that the all terrain vehicle may be considered to have a fender on each side of the centerline of the vehicle (see claim objection portion of this Office Action). Also note that Applicant shows only a single rear fender on Figure 13. Further note that the title of Japanese Patent 60-15348 is motor tricycle (see English Language Abstract). From this, it is best understood that there are two rear wheels, each rear wheel having an associated fender.

Regarding the recitation of "radiator" in claim 2, see reference number 7 of Japanese Patent 60-153418. Regarding the recitation of "the radiator drawing intake air from the at least one ventilation opening" in claim 2, note that the radiator 7 of the combination all terrain vehicle of Japanese Patent 60-15348 "draws" air from reference number 9. Note that the location of

reference number 9 (4 places - see Figure 3) of Japanese Patent 60-15348 is proximal the openings 42 and 43 of Japanese Patent 5-147565.

Regarding claims 3 and 4, see Figure 1 of Japanese Patent 60-153418, noting reference number 43 will be located above a water wave, particularly when the wave is small.

12. Claims 7 and 9-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent 60-153418 in view of Japanese Patent 5-147565.

Japanese Patent 60-153418 teaches a straddle-type vehicle (Figure 1) comprising:

an engine (English Language abstract);

a seat (Figure 1);

an air intake system (including 13 and 14a) operatively (English Language abstract) connected to the engine; and

a pair of rear fenders (2 - for left and right rear wheels - see title of English Language Abstract).

Japanese Patent 60-153418 fails to teach at least one opening on each of the rear fenders adjacent a rear portion of the seat which supplies intake air to the air intake system and that the front portion of the seat is positioned generally above the engine. The drawing Figures in combination with the English Language Abstract also leave unclear the exact location of the engine.

However, Japanese Patent 5-147565 teaches an opening (42 and 43) on a rear portion of a left and right rear fender (32). An opening at a left and right rear fender is advantageous where the radiator and fan is installed within the rear fenders, such as Japanese Patent 60-153418, the opening will allow a smoother and greater flow of air to the radiator than would be possible if there were not openings present and air had to be drawn from the open area around the bottom of the vehicle near the wheels which would require the airflow to take a sharp turn just upstream of the radiator.

Also, Japanese Patent 60-153418, in combination with the English Language Abstract leaves unclear where the engine is located. However, due to the vehicle configuration and location of the air intake system, the only location that would allow sufficient room, and is proximal to the air intake system and drive wheels is the area under the seat. Note that the engine located at any location under the seat would meet the limitation of "a seat having a front portion positioned generally above the engine", since the "front portion" of the seat may be considered the front-half of the seat and this "front portion" would be at least "generally" above the engine. Also note that the English Language Abstract of Japanese Patent 60-153418 teaches that the air intake pipe 14a is associated with a carburetor. The Examiner takes Official Notice that a carburetor is associated with an engine. This may be seen on various small vehicles such as lawn mowers and pre "mid-80's vintage" automobiles. A carburetor is necessary to provide the correct air/fuel ratio to an engine and to regulate engine output by controlling the density of the incoming air/fuel mixture to the engine.

Further, note that Peter teaches an aperture (see following sketch) on the rear side of a rear fender (32). An aperture is advantageous on a rear fender in that it allows improved air flow to internal located components. Note that the aperture of Peter is proximal the air intake ("upstream" of 13) going to the carburetor (see English Language Abstract) of Japanese Patent 60-153418. Note also that the air intakes of Peter are above the rear wheels of Peter (Figure 3). This will improve airflow to the carburetor of Japanese Patent 60-153418. Japanese Patent 60-153418 does not explicitly mention an engine. However, the Examiner takes Official Notice that a carburetor is associated with an engine. The purpose of a carburetor is to provide correct the correct air/fuel ratio to an engine and to regulate the density of the air/fuel mixture to the engine by use of a throttle valve to regulate power output of the engine. This may be seen on many small tractors and mowers, as well as pre-mid 80's vintage automobiles.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize at least one opening on a left and right rear fender adjacent a rear portion of the seat in order to supply intake air to the air intake system of Japanese Patent 60-153418, as taught by Peter. It also would have been obvious to one of ordinary skill in the art at the time the invention was made that the front portion of the seat is positioned generally above the engine of Japanese Patent 60-153418. It further would have been obvious to one of ordinary skill in the art at the time the invention was made to include apertures at the rear of the fender of Japanese Patent 60-15348, as taught by Peter.

Regarding the apertures of Peter, note that Japanese Patent 5-147565 already teaches apertures at the front and sides of a rear fender. Further note that per Section 2144 of the MPEP that it is considered within the skill level of one of ordinary skill in the art to duplicate parts.

Note that when the teachings of Japanese Patent 5-147565, which arguably has only a single rear fender, since it has only a single rear wheel, is applied to Japanese Patent 60-153418, which has two rear fenders, since it has two rear wheels, that the openings 42 and 43 of Japanese Patent 5-147565 are on both rear fenders of Japanese Patent 60-153418. See also the claim objection portion of this Office Action.

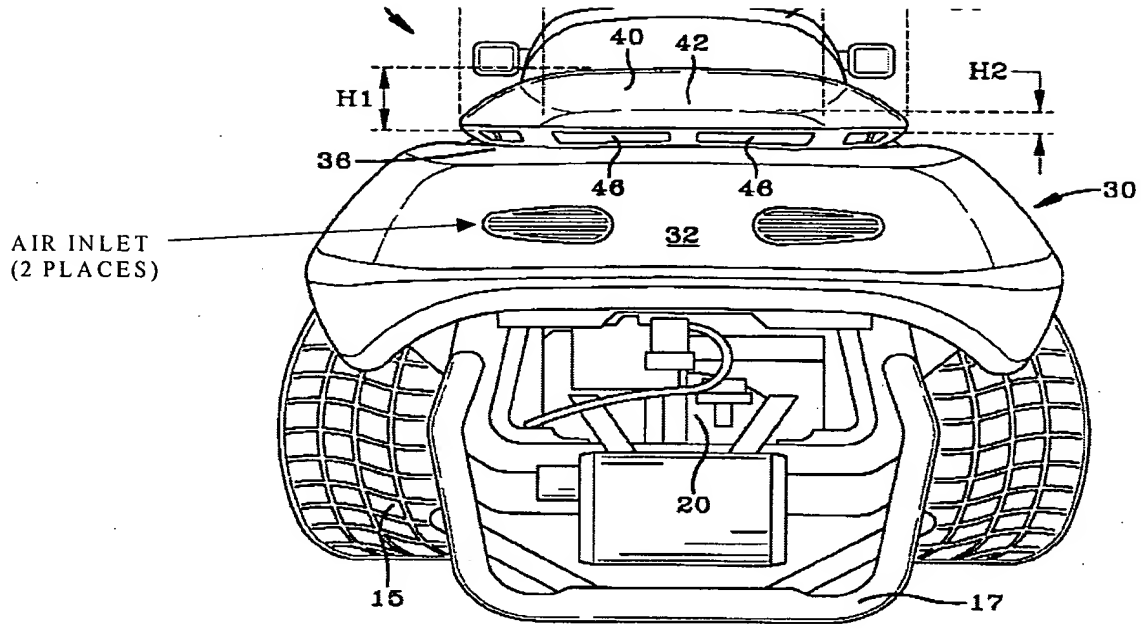
Regarding claim 9, see Figure 4 of Japanese Patent 60-153418, particularly the pipe "upstream" of reference number 13.

Regarding claim 10, see Figure 1 of Japanese Patent 60-153418 and Figure 4 of Japanese Patent 5-147565. See also the claim objection portion of this Office Action.

Regarding claim 11, see reference number 43 of Figure 4 of Japanese Patent 5-147565.

Regarding claim 12, see Figure 3 of Peter and Figure 1 of Japanese Patent 60-153418.

Regarding claims 13 and 14, see reference number 43 of Japanese Patent 5-147565. Also regarding claim 14, note that the rewardly facing apertures of Peter are positioned to avoid interaction with a water wave created in a front portion of the vehicle.



13. Claims 18, 20, 21, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent 60-153418 in view of Japanese Patent 5-147565.

Japanese Patent 60-153418 teaches a straddle-type vehicle having front and rear wheels (Figure 1) and being capable of traversing water having a predetermined depth (say 1"), the vehicle comprising:

an engine (English Language abstract);

an air intake box (13); and

a pair of rear fenders (2 - note that the title of the Japanese Patent 60-153418 in the English Language Abstract is "motortricycle" which implies two rear wheels). See also the claim objection portion of this Office Action regarding the recitation of "pair of fenders".

Japanese Patent 60-153418 fails to teach at least one opening in communication with the air box, the at least one opening being provided on the rear fenders and positioned on the vehicle rearward of the front wheels so that a height of the opening is greater that the predetermined depth of the water, the at least one opening being positioned on the vehicle so as to avoid water entering the at least one opening due to encountering a water wave created in front of the vehicle that has a wave depth greater than the predetermined depth of the water. Japanese Patent 60-153418 also fails to explicitly state that there is a frame.

However, Japanese Patent 5-147565 teaches at least one opening (42 and 43) on a rear fender (37). An opening at a rear portion of a rear fender is advantageous where the radiator and fan is installed within a rear fender, such as Japanese Patent 60-153418, so as to allow a smoother and greater flow of air to the radiator than would be possible if there were not openings present and air had to be drawn from the open area around the bottom of the vehicle near the wheels which would require the airflow to take a sharp turn just upstream of the radiator.

Also, Japanese Patent 5-147565 teaches a frame (4). A frame is necessary to provide a strong and stable structure on which vehicle components are either directly mounted, or connected to.

Additionally, note that the at least one opening of Japanese Patent 5-147565 when applied to the air intake system of Japanese Patent 60-153418 is positioned on the vehicle rearward of the front wheels (Figure 1 of Japanese Patent 60-153418 and Figure 4 of Japanese Patent 5-147565) so that a height of the opening is greater that the predetermined depth (say ½") of water, the at least one opening being positioned (at a relatively high height and rearward location on the vehicle) on the vehicle so as to avoid water entering the at least one opening due to encountering a water wave created in front of the vehicle that has a wave depth greater than the predetermined depth of the water. An opening positioned at a height higher than a water wave is advantageous in that water will not be drawn into the engine intake, or through the radiator fan, which could damage the radiator fan, or reduce fan RPM, by creating drag.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize at least one opening adjacent a rear portion of the seat in order to supply intake air to the air intake system of Japanese Patent 60-153418, as taught by Japanese Patent 5-147565. It also would have been obvious to one of ordinary skill in the art at the time the invention was made that the vehicle of Japanese Patent 60-153418 would have a frame, as taught by Japanese Patent 5-147565. It additionally would have been obvious to one of ordinary skill in the art at the time the invention was made that the opening on the vehicle of Japanese

Patent 60-15348 would be positioned on the rear fenders at a height so as to avoid a water wave, as partially taught (openings on rear fenders) by Japanese Patent 5-147565.

Note that when the teachings of Japanese Patent 5-147565, which arguably has only a single rear fender, since it has only a single rear wheel, is applied to Japanese Patent 60-153418, which has two rear fenders, since it has two rear wheels, that the openings 42 and 43 of Japanese Patent 5-147565 are on both rear fenders of Japanese Patent 60-153418. See also the claim objection portion of this Office Action.

Regarding claim 20, see Figure 4 of Japanese Patent 5-147565.

Regarding claim 21, see Figure 4 of Japanese Patent 60-153418, particularly reference number 13 and the portion of the pipe "upstream" of reference number 13. See also Figure 4 of Japanese Patent 5-147565.

Regarding claim 23, see the drawing figures of Japanese Patent 60-153418.

Regarding claim 24, see reference number 43 and Figure 1 of Japanese Patent 5-147565.

14. Claims 18 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent 61-171610 in view of Japanese Patent 61-200029.

Japanese Patent 61-171610 teaches a straddle-type vehicle having front and rear wheels (Figure 1) and being capable of traversing water having a predetermined depth (say 1"), the vehicle comprising:

an engine (14);

a frame that mounts the engine (structure on Figure 1 that supports engine);

at least one opening (34), the at least one opening being positioned on the vehicle rearward of the front wheels;

rear fenders (8) attached to the frame (via vehicle structure), the at least one opening being provided on at least one of the rear fenders (Figure 2).

Japanese Patent 61-171610 fails to explicitly state that the at least one opening in communication with the air box, so that a height of the opening is greater that the predetermined depth of the water, the at least one opening being positioned on the vehicle so as to avoid water entering the at least one opening due to encountering a water wave created in front of the vehicle that has a wave depth greater than the predetermined depth of the water.

However, note that due to the "sideways" orientation of the air intake 34, the water wave which travels "fore-and-aft" will not tend to be drawn in to the air intake. Additionally, note that since the height of the water wave has not been specified, that the height of the water wave may be to be arbitrarily selected to be less than the elevation of the opening above the ground surface that the vehicle travels on.

Japanese Patent 61-171610 fails to teach an airbox.

However, Japanese Patent 61-200029 teaches a vehicle having an airbox (80) positioned adjacent an engine (Figure 2). An airbox positioned adjacent an engine is advantageous in that an airbox may contain a filter to filter-out unwanted contaminants. The airbox would receive air from an opening (86).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize an airbox in the air intake system of Japanese Patent 61-171610, as taught by Japanese Patent 61-200029. It also would have been obvious to one of ordinary skill in the art at the time the invention was made that the opening on the vehicle of Japanese Patent 60-15348 would be positioned at a height so as to avoid a water wave.

Regarding claim 22, see Figures 2 and 3 of Japanese Patent 61-171610.

15. Claims 25 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent 61-200029.

Japanese Patent 61-200029 teaches a vehicle having front and rear wheels suspended from the frame (Figures 1-4) comprising:

a frame on which the front and rear wheels are suspended (Figures 2-4);

an engine (58) mounted on the frame (Figure 3);

a fender structure (10, 20 and 84) overlying at least the rear wheels, the fender structure including at least one aperture (88);

An air intake system in communication with the engine, the air intake system including an air intake box (80) mounted (via vehicle structure) on the frame, the air intake box having an intake pipe (82) having an inlet end, the intake pipe being fastened with respect to the fender structure such that the inlet end is in communication with the aperture in the fender structure and is positioned rearward of the front wheels and higher that the rear wheels (Figures 1-4).

Japanese Patent 61-200029 fails to explicitly state that the vehicle is an "all terrain vehicle".

However, an "all terrain vehicle" is understood to be used "off-road" as well as "on-road". Note that the English Language abstract for Japanese Patent 61-200029 recites "To make it hard for an air cleaner to suck in...up flung dust due to wheels...". This recitation is a clear indication that the vehicle is intended to be used "off-road", as if the vehicle was used only on "paved roads", there would be no "up flung dust". Also note that the "rugged" construction of the frame and suspension system facilitates off-road use of the vehicle. Also note that the term "all terrain vehicle" is considered to be a "misnomer", as no vehicle, including Applicant's, is capable of being driven on "all terrain" of the earth, including sides of cliffs and the ocean floor.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the vehicle of Japanese Patent 61-200029 may be considered an "all terrain vehicle".

Regarding claim 27, see Figure 2, noting the connection of reference number 82, which is configured as a hose to reference number 86 which is configured as a short length of pipe commonly known as a "nipple" and 84. Although not taught by Japanese Patent 61-200029, the Examiner takes Official Notice that hoses, especially where relatively low pressures are involved are commonly attached to pipes or nipples by clamps or clips. An example of a clamp is a "hose clamp" used on many cars. An example of a clip is a "c-clip" also used in cars, on vacuum cleaner hoses etc. A hose clamp is advantageous in that is offers 360 degree clamping of the

hose, minimizing the hose coming loose. A "c-clip" is advantageous in that the clip may be installed, or removed without the "joint" being broken.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a fastener, such as a c-clip where reference numbers 82 and 86 of Figure 4 of Japanese Patent 61-200029 are connected.

Note that the above Official Notice is repeated from the last Office Action (paper 2). Since Applicant did not seasonally traverse the above Official Notice, the above Official Notice is now considered to be admitted prior art. See Section 2144.03 of the MPEP.

16. Claims 25, 26, 28, 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent 60-153418 in view of Japanese Patent 5-147565 and Peter, US Patent 5,947,219.

Japanese Patent 60-153418 teaches a vehicle having front and rear wheels (4 and 5) comprising:

a fender structure overlying the rear wheels (Figure 1);

an engine (English Language Abstract); and

An air intake system (including 13 and 14a) in communication with the engine (English Language abstract), the air intake system including an air intake box (13), the air intake box having an intake pipe ("curved pipe" in Figure 4 just "upstream" of radiator portion 7a) having an inlet end, the intake pipe being fastened with respect to the fender structure such that the inlet

end is in communication with the aperture in the fender structure and is positioned rearward of the front wheels (Figure 1).

Japanese Patent 60-153418 fails to explicitly state that the vehicle is an "all terrain vehicle". Japanese Patent 60-153418 also fails to teach that the front and rear wheels and an engine and air intake box are suspended, and mounted, respectively to a frame, at least one aperture on the fender structure associated with the air intake of an engine and that the inlet end of the intake pipe is higher than the rear wheels.

However, an "all terrain vehicle" is understood to be used "off-road" as well as "on-road". Note that the vehicle of Japanese Patent 60-153418 is described in the title as a "motortricycle". Two or three wheeled motorcycles are generally understood to be capable of being ridden "off-road", in such terrain such as grass, dirt trails, etc., as well as "or-road". Due to this, the "motortricycle" of Japanese Patent 60-153418 may be considered to be an "all-terrain vehicle". All terrain vehicles are advantageous in that they offer the user the possibility of many "expanded" destinations, not accessible by a conventional automobile. Also note that the term "all terrain vehicle" is considered to be a "misnomer", as no vehicle, including Applicant's, is capable of being driven on "all terrain" of the earth, including sides of cliffs and the ocean floor.

Also, Japanese Patent 5-147565 teaches a frame (4). A frame is necessary to provide a strong and stable structure on which vehicle components are either directly mounted, or connected to. Note that Figure 1 of Japanese Patent 5-147565 shows the engine mounted on the

frame (4), via connecting components. Note that the "frame" may also be considered to include reference numbers 19 and 23 of Japanese Patent 5-147565.

Additionally, Japanese Patent 5-147565 teaches an aperture (43) on a rear fender (37) that is located higher than the rear wheels (see Figure 1). A location of the aperture higher than the rear wheels is advantageous in that dust and debris that may be thrown-up by the rear tires are less likely to enter the aperture at a higher location due to the effect of gravity.

Further, note that Peter teaches an aperture (see above sketch) on the rear side of a rear fender (32). An aperture is advantageous on a rear fender in that it allows improved air flow to internal located components. Note that the aperture of Peter is proximal the air intake (piping "upstream" of 13) going to the carburetor (see English Language Abstract) of Japanese Patent 60-153418. Note also that the air intakes of Peter are above the rear wheels of Peter. This will improve airflow to the carburetor of Japanese Patent 60-153418. Japanese Patent 60-153418 does not explicitly mention an engine. However, the Examiner takes Official Notice that a carburetor is associated with an engine. The purpose of a carburetor is to provide correct the correct air/fuel ratio to an engine and to regulate the density of the air/fuel mixture to the engine by use of a throttle valve to regulate power output of the engine. This may be seen on many small tractors and mowers, as well as pre "mid-80's vintage" automobiles.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the vehicle of Japanese Patent 60-15348 may be considered an "all terrain vehicle". It also would have been obvious to one of ordinary skill in the art at the time the

invention was made that the vehicle of Japanese Patent 60-15348 would have a frame, as taught by Japanese Patent 5-147565. It additionally would have been obvious to one of ordinary skill in the art at the time the invention was made to include an aperture on the fender structure of Japanese Patent 60-15348, as taught by Japanese Patent 5-147565. It further would have been obvious to one of ordinary skill in the art at the time the invention was made to include apertures at the rear of the fender of Japanese Patent 60-15348, as taught by Peter.

Regarding the apertures of Peter, note that Japanese Patent 5-147565 already teaches apertures at the front and sides of a rear fender. Further note that per Section 2144 of the MPEP that it is considered within the skill level of one of ordinary skill in the art to duplicate parts.

Also note regarding the recitation of "An all terrain vehicle" in the preamble of claim 25, Section 2111.02 of the MPEP recites "Any terminology in the preamble that limits the structure of the claim limitation must be treated as a claim limitation....If the body of a claim fully and intrinsically sets forth all of the limitations of the claimed invention, and the preamble merely states...the purpose or intended use of the invention...then the preamble is not considered a limitation...". Since the above preamble recitation only recites intended use and does not contain any structural limitations, any device that meets the limitations of the body of claim 25 will be understood to also meet the preamble limitations since any device that meets the limitations of the body of claim 1 will be able to functionally perform the intended use recited in the preamble.

Regarding claim 26, see Figure 4 of Japanese Patent 60-153418 and particularly the piping "upstream" of reference number 13. See also Figure 4 of Japanese Patent 5-147565.

Regarding claim 28, see Figure 4 of Japanese Patent 60-153418.

Regarding claim 30, see Figure 1 of Japanese Patent 60-153418 and comments above concerning the location of the "combination" intake pipe of Japanese Patent 60-153418 and Peter.

Regarding claim 31, see Figure 4 of Japanese Patent 5-147565.

17. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent 60-153418, Japanese Patent 5-147565 and Peter, US Patent 5,947,219, as applied to claim 25 and further in view of Powell, US Patent 6,243,928.

The combination all-terrain vehicle of Japanese Patent 60-153418 fails to teach how air intake pipe 14a is attached to surrounding structure.

However, Powell teaches the use of a clip to attach a pipe (see title) to surrounding structure (32). The use of a clip to attach a pipe to surrounding structure, is advantageous in the clip holds the pipe securely in place and prevents excessive vibration or unwanted movement.

Therefore, it would have been obvious to one of ordinary skill in the art to utilize a clip to mount the intake pipe of the combination all-terrain vehicle of Japanese Patent 60-153418 in place, as taught by Powell.

Regarding the claim 27 recitation of "a clip that attaches to the fender structure" see the claim objection portion of this Office Action, noting that reference number 8 of Japanese Patent 60-153418 may broadly be termed "fender structure" to the extent that reference number 502 of the Instant Application is being termed "fender structure". Also note that the surrounding structure, 8, of Japanese Patent 60-153418 is "attached to" the fender structure via vehicle structure.

18. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent 60-153418, Japanese Patent 5-147565 and Peter, et al, US Patent 5,947,219, as applied to claim 25 and further in view of Japanese Patent 1301484.

The combination all-terrain vehicle of Japanese Patent 60-153418 teaches an aperture (9) on the forward end of the fender structure and an intake pipe (10) with a "bent" portion (Figure 2) such that the inlet end faces a front end of the vehicle. Japanese Patent 60-153418 in combination with the English Language abstract leaves unclear that this structure is associated with the air intake of an engine. Pipe 10 is believed to be only associated with the radiator cooling air.

However, Japanese Patent 1301484 teaches an intake system that draws air both from the rear and forward direction of the vehicle. This is advantageous in that when the vehicle is idling, the "dual" intake locations provide sufficient airflow. When the vehicle is traveling at high speeds, the forward intake location provides greater power and efficiency by "supercharging" the intake air.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the front aperture and intake pipe facing forward of Japanese Patent 60-153418 for intake air to the engine, as taught by Japanese Patent 1301484.

Note that in order to accomplish this, that some minor "plumbing" modifications may be required so that the intake pipe is directly receiving "supercharged" air from the aperture and that this supercharged air is directed to the airbox. There "plumbing" modifications are considered within the skill level of one of ordinary skill in the art. Note that per Section 2144 of the MPEP it is considered within the skill level of one of ordinary skill in the art to rearrange parts.

Allowable Subject Matter

19. Claim 15 would be allowable if rewritten to overcome the rejection under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Applicant's Remarks (paper 4) and Examiner's Comments

20. The amendment (paper 4), or comments within the amendment resolved all specification and claim objections made on the first Office Action (paper 2), with the one exception. This "exception" was a claim objection made on the last Office Action and repeated on this Office

Action (paper 5) concerning use of the term "pair of fenders" to describe a single continuous object.

Also, a couple of new specification and claim objections are also set forth in this Office Action that were previously overlooked.

21. Comments in the amendment (paper 4) and drawing corrections (paper 3) resolved all drawing objections made on the first Office Action, except for the one drawing objection made in the last Office Action concerning the fact that some reference numerals in Figures 12 and 13 are informal, as they are not uniform and well defined. It is noted that in Paper 4 Applicant states that these reference numerals will be corrected at a later date.

22. The amendment to the claims has overcome the 35 USC 102 rejection of claims made in the last Office Action. However, as noted in this Office Action, claim 7, as amended, and some claims that depend from claim 7 are still anticipated by the prior art under 35 USC 102.

23. The Applicant has traversed all 35 USC 103 rejections made on the last Office Action. Upon further review and after consideration of Applicant's remarks some of the 103 rejections made in the last Office Action were withdrawn. Due to this, Applicant's comments/arguments traversing these rejections in paper 5 will not be addressed. The withdrawal of these 103 rejections does not mean the Examiner considers them to be improper. The Examiner, upon further review, and in consideration of Applicant's comments has determined that the best prior art may not have been utilized in setting forth these rejection. Accordingly, this action is made non-final.

Additionally, some of the 103 rejections made on the last Office Action (those associated with Japanese Patent 200029) are repeated in this Office Action. Applicant's arguments against this rejection made in the "Remarks" section of the amendment and the Examiner's response follows:

(1) Applicant's remark - On page 13 of paper 4, regarding Japanese Patent 200029 the Applicant recites "...JP '029 does not teach or suggest the all-terrain vehicle as recited in claim 1...".

Examiner's response - The Examiner offers the following comment:

The Applicant has recited the limitation of an "all-terrain vehicle in the preamble". Note that this recitation merely requires that the vehicle be capable of traveling in varied terrains, as opposed to being able to operate only on streets, as might be the case for many automobiles, though even automobiles are capable of limited "off-road" use. As already mentioned many times in this Office Action, Section 2111.02 of the MPEP only gives weight to the preamble when actual structure is recited, or when a function is set forth, the prior art must be capable of performing that function. Note that it is the Examiner's position that the vehicle of Japanese Patent 200029 may travel on many varied terrains, just as Applicant's. As previously mentioned in this Office Action, no vehicle is "all-terrain", as the term "all-terrain" would imply that the vehicle is capable of being driven on all terrain on the earth, including sides of cliffs and in a volcano, for example. Note also that the prior art has assigned more than one meaning to the term "all-terrain vehicle". Note that the cited prior art includes Frye, US Patent 4,357,893, which

teaches an "all-terrain vehicle of the motorcycle type" (see title) that is a motorcycle that travels on water.

(2) Applicant's remark - On page 14, regarding Japanese Patent 200029 the Applicant recites "...In JP '029, the ventilation opening 88 noted by the Examiner is provided in the partition panel 84 that forms a part of the baggage room...Thus, JP '029 does not teach or suggest rear fenders having at least one ventilation opening, as recited in claim 1".

Examiner's response - The Examiner offers the following comment:

Note that Figures 4 and 5 of JP 200029 show that the panel 84 is part of continuous structure on the exterior of the vehicle in the vicinity of the wheels that includes reference numbers 10 and 20. Therefore, it is considered reasonable that the panel 84 in combination with reference numbers 10 and 20 may be interpreted to be a fender, certainly to the extent that Applicant has termed continuous structure in Instant Figure 13 a "fender".

(3) Applicant's remark - On page 14, regarding Japanese Patent 200029 the Applicant recites "As shown in Fig. 2 of JP '029, for example, fenders 76a and 76b are not associated with the air cleaner 80...".

Examiner's response - The Examiner offers the following comment:

This comment would appear to apply to claims 25 and 27. Claim 25 recites "...the intake pipe being fastened with respect to the fender structure such that the inlet end is in communication with the aperture...". Since the Examiner is not limiting the use of the term "fender" exclusively to reference numbers 76a and 76b, the above comment is not considered

germaine. Note that Webster's Collegiate Dictionary, 10th Edition, defines "fender" as "a guard over the wheel of a motor vehicle". Note that the Examiner has defined the rear fenders to include reference numbers 10, 20 and 84, which are all continuous structure. Note that Figures 4 and 5 show that the structure defined by reference numbers 10, 20 and 84 to be "over" the wheels and may be considered a "guard", as it keeps objects away, further than 76a or 76b, from the wheels and will assist 76a and 76b to keep flying debris created by the spinning wheels from being flung away from the vehicles. Further note that 76a and 76b are attached to reference numbers 10, 20 and 84 via vehicle structure. See also the claim objection portion of this Office Action regarding claim 27.

Note that the above comments also apply to the recitation of "...JP '029 does not teach or suggest a fender structure overlying at least the rear wheels..." in the middle of page 14 of paper 4.

24. Regarding the Peter reference, the Applicant has misunderstood what the Examiner is terming "openings". The Applicant on page 15 of paper 4 appears to believe that reference number 46 are the "openings" being referred to by the Examiner on paper 2. However, the "openings" are actually "openings" located below reference number 46. To clarify this, the Examiner has added a sketch in this Office Action illustrating where these "openings" are actually located.

Conclusion

25. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

A) Scheinkoenig, et al - teaches openings in a fender

B) Frye - teaches a motorcycle may be termed an all-terrain vehicle (title)

C) Japanese Patent 58-33522 - teaches an all-terrain vehicle

D) Japanese Patent 59-155545 - teaches an all-terrain vehicle

E) Japanese Patent 62-6826 - teaches an air intake opening in a front fender

26. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Bryan Fischmann whose telephone number is (703) 306-5955. The examiner can normally be reached on Monday through Friday from 7:30 to 4:00.

If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Brian Johnson, can be reached on (703) 308-0885. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

B. Fischmann 6-23-3

BRYAN FISCHMANN
PATENT EXAMINER